

April 3, 2001

HYDROTRICITY
Request for Waiver Under Section 4
Of Chapter 313

ADVISORY RULING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Advisory Ruling, we decline to either interpret our net billing rule (Chapter 313), or grant a waiver, to allow an “association” to be net billed as a single customer. We do interpret the rule to allow a customer to net bill against more than one account, including accounts that are adjacent to or in the proximity of a stream or pond behind a hydropower dam. Finally, we interpret the rule to allow a customer greater flexibility in using “kWh credits” by providing an option to choose the net billing “anniversary” date or an individual month rolling methodology.

II. BACKGROUND

On January 2, 2001, John Bertl filed a request for an interpretation or waiver of our customer net energy billing rule (Chapter 313) to allow an association to become a “customer” for purposes of net billing. The request relates to a 39 kW hydroelectric facility on Gilman Stream, located in North New Portland that is owned by Mr. Bertl. The dam, which has been in place for more than 100 years, has formed an upstream lake (known as Gilman Pond) that allows for public fishing, swimming and boating. There are seasonal and year-round dwellings, as well as a campground, on the shores around the lake. In January 2000, an association was formed to control the operation of the dam and the water level it provides.

Mr. Bertl requests an interpretation of Chapter 313 that would allow the accounts of all members of the association to be in the name of the association; the association would become a single customer of Central Maine Power Company (CMP) and the association would be billed under the terms of the net billing rule. To the extent that this approach is not consistent with the intent of the rule, Mr. Bertl requests that CMP be directed to net bill all the accounts that are in the name of Mr. Bertl.

On January 30, 2001, Mr. Bertl submitted a letter, stating that CMP has refused to net bill all his accounts because, in CMP’s view, the rule contemplates net billing for a single meter and that some of Mr. Bertl’s accounts fall outside the rule’s requirement that the renewable generator be located on or in the vicinity of the customer’s premises. Mr. Bertl urges the Commission to adopt a more flexible approach in interpreting the

rule in recognition of the limited sites upon which hydropower can be located (so to promote the economic viability of small hydropower).

On February 2, 2001, Mr. Bertl submitted an additional letter, asking the Commission to direct CMP to change the manner in which it treats unused kWh “credits” under the rule. Pursuant to CMP’s net billing contract, all unused kWh credits are eliminated on each 12-month anniversary of the effective date of the contract. Mr. Bertl explains that this approach is problematic because some renewable power, such as hydropower, is cyclic in nature. If the anniversary date occurs immediately after a high productivity period, the net billing customer would lose the benefit intended by the rule’s annualized methodology. Mr. Bertl notes that the rule does not specify a calendar year or a specific beginning and ending period each year. He argues that the Commission interpret the rule to provide for a continuous 12-month rolling methodology.¹

On February 14, 2001, CMP filed a written response to Mr. Bertl’s initial submission regarding the net billing of the association. CMP states that Chapter 313 contemplates net billing for a single customer served by a single small generator located either on the customer’s property or adjacent to it. Chapter 313, according to CMP, was clearly not intended to facilitate a customer’s provision of electric service to its neighbors over the utility’s facilities, which is what would occur under Mr. Bertl’s association proposal. Such activity would constitute sales to the public which can be provided only by licensed competitive electricity providers. Additionally, CMP states that adopting the association proposal would result in lost revenues and additional administrative costs. CMP states that it is willing to net bill several of Mr. Bertl’s accounts that are adjacent to the dam.

During oral conversations, CMP responded to Mr. Bertl’s other requests. CMP states that the other facilities that Mr. Bertl would like to include in the net billing are approximately a mile away from the dam and, as such, do not fall within the “vicinity” requirement in Chapter 313. CMP also stated that its kWh credit annualized methodology is consistent with the language in the rule and contained in its standard net billing contract on file at the Commission.

The Public Advocate filed comments on February 26, 2001, stating that the net billing of the association as a single customer is not consistent with the purposes of Chapter 313, and thus the requested waiver should not be granted. The Public Advocate, however, suggested that we reopen the rule to consider arrangements such as Mr. Bertl’s association proposal.

¹ Mr. Bertl’s submissions are essentially requests for advisory rulings regarding Chapter 313, and we will treat them as such. On our own motion, we waive the procedural requirements for advisory rulings contained in Chapter 110.

On February 21, 2001, the Independent Energy Producers of Maine (IEPM) filed comments that support Mr. Bertl's request. The IEPM states that nothing in the rule expressly prohibits an association from being the net bill "customer," and Mr. Bertl's proposed activity would not make him either a transmission and distribution utility or a competitive electricity provider. If necessary, the IEPM requests that the Commission amend the rule to allow the proposed activity.

Thomas and Wanda Calder submitted comments, urging that the Commission approve Mr. Bertl's request to help preserve the environmental benefits from the dam.

III. DECISION

A. Association

We conclude that the net billing of the association, as proposed by Mr. Bertl, is inconsistent with both the language and the intent of our net billing rule. Accordingly, we must decline Mr. Bertl's request that we interpret the rule or grant a waiver to allow the association to be net billed as a single customer.

Section 3(B) of Chapter 313 governs qualification for net billing. This provision states:

Any customer of a transmission and distribution utility that uses energy generated using a renewable fuel or technology as specified in 35-A M.R.S.A. § 3210(2)(C) from a facility with an installed capacity of 100 kW or less to serve its own electricity requirements may elect net energy billing.

Chapter 313 § 3(B) (emphasis added). Section 3(C) also specifies that the renewable facility be "used primarily to offset part or all of the customer's own electricity requirement." The plain reading of these provisions is that a customer may qualify for net billing if it uses energy from a renewable facility to meet its own electrical needs. This requirement is confirmed in our Order that adopted Chapter 313. In that Order, we repeatedly refer to net billing as a means to facilitate a customer's ability to use small-scale renewable facilities to meet its own loads. *Order Adopting Rule and Statement of Factual and Policy Analysis*, Docket No. 98-621 at 3-4, 8-9 (*Order Adopting Rule*).

Mr. Bertl's proposal would, in essence, require CMP to net bill numerous customer accounts (i.e. association members) against the output of Mr. Bertl's hydropower facility. Such a result was clearly not intended by the rule. In our *Order Adopting Rule*, we recognized that net billing has costs in terms of reduced utility revenues and expenses related to additional equipment. *Id.* at 6. The utility still incurs the costs of the line which serves the net-billed customer, but the responsibility for the net-billed customer's costs is thereby shifted to all other ratepayers. It was precisely for this reason that we limited the applicability of net billing to a customer's own usage. In

fact, we noted that “[t]he absence of any power sales removes any incentive to size facilities to generate more power than necessary to serve the customer’s own electricity requirements.” *Id.* at 4. Mr. Bertl’s proposal can be viewed as a means to provide power to other members of the association in a manner that upsets the careful balance of benefits and cost embodied in Chapter 313.²

For these reasons, we cannot interpret the rule to require CMP to net bill the association as a single customer. We also decline to grant a waiver to allow this to occur. Section 4 of Chapter 313 states that a waiver may not be granted if it would be inconsistent with the purposes of the rule. As discussed above, the Bertl request would violate a fundamental tenet of the net billing rule (that the output of the generating facility be used to serve the customer’s own needs). Accordingly, a waiver cannot be found to be consistent the purposes of the rule.

We are also not inclined to reopen the rule to consider the Bertl proposal and other ways to expand the applicability of net billing. As noted above, the net billing rule was carefully crafted to balance the benefits of facilitating small-scale renewable facilities with the costs of doing so. The net-billing rule encourages the development of small-scale renewable facilities by relieving their owners of some or all of the costs of the transmission and distribution that makes the facilities’ development economically feasible. These costs do not vanish; they may ultimately be shifted to other ratepayers. As discussed in the *Order Adopting Rule*, prior to restructuring, net billing had developed into a long-standing practice to facilitate use of renewable resource to serve customers’ own needs. We concluded that such a long-standing practice should not be eliminated solely as a result of industry restructuring, and instead should be modified to be workable in a restructured environment. *Id.* at 3. In our view, all efforts should be made to enable small-scale renewable facilities to sell directly into the market before consideration is given to expanding net billing qualification beyond that which has been allowed historically.³

B. Bertl Accounts

CMP’s view is that the net billing rule presumes that both generation and usage would flow through a single meter and is thus not intended to allow net billing for more than one account. However, as an accommodation, CMP is willing to net bill three of Mr. Bertl’s accounts located at or near the dam.⁴ CMP has refused to net bill other

² The Bertl proposal may also be considered a “sale” of electricity at retail, thus implicating the requirement for a license as a competitive electricity provider. 35-A M.R.S.A. § 3203.

³ We note that the Commission’s distributed generation report (required by Resolve 1999, ch. 197) will address net billing as it relates generally to small-scale generation. The report will be submitted on or before October 1, 2001.

⁴ CMP had allowed the previous owner to net bill against these three accounts.

accounts that are located between one-quarter mile to a mile away from the dam on the grounds that this would be outside the “vicinity” requirement of the rule.

As discussed above, Chapter 313 was intended to allow a customer to net bill against its own electricity needs. The rule specifically allows “customers” to net bill and makes no reference to “accounts.” A customer may have several accounts for a variety of reasons, and we see no reason to limit the rule’s applicability to a single account. The net billing concept of a single meter running in both directions was abandoned long ago in that CMP has historically used two meters for net billing customers. In our view, it is reasonable and consistent with the purposes of Chapter 313 to allow a single customer to net bill against more than one account as long as the customer is subject to all of the rule’s requirements and limitations.

As stated, CMP has agreed to net bill the accounts that are located at or adjacent to the dam. The issue thus becomes whether the other accounts that are located one quarter mile to one mile should be net billed. Section 3(C) of Chapter 313 specifies that the renewable facility “must be located on or in the vicinity of the customer’s premises.” In our *Order Adopting Rule*, we acknowledged that photovoltaic arrays or small wind turbines may need to be sited on adjacent or nearby property for their projects to be feasible and concluded that some flexibility in this regard would be consistent with the purposes of the rule.

Mr. Bertl notes that sites for hydropower are severely restricted compared to photovoltaic arrays or wind turbines and this should be taken into account when construing the “vicinity” requirement of the rule. We agree that flexibility with respect to hydropower is consistent with the spirit and purposes of Chapter 313 and conclude that the “vicinity” requirement should be construed to allow Mr. Bertl to net bill against all his accounts⁵ located adjacent to or nearby the stream or pond behind the dam. By construing the “vicinity” requirement in this manner, we restrict net billing to facilities that can be considered as associated or connected with the existence of the dam (a Bertl account located in some other portion of the State would not qualify). Consistent with the rule’s intent, this approach represents a fair balance between facilitating small-scale renewable power and limiting the cost to utilities.

C. Unused kWh Credits

To the extent a customer’s generation exceeds its usage in a month, Chapter 313 allows for “kWh credits” to be applied to offset usage in succeeding months. Specifically, Chapter 313, section 3(D) states in relevant part:

⁵ To qualify for net billing, the account must be in the name of Mr. Bertl and the facility must be owned or leased by Mr. Bertl.

1. Excess Generation. If the electricity generated during the billing period by the customer's facility plus any kilowatt-hour credits from prior billing periods exceed the customer's kilowatt-hour usage during the billing period, the excess shall be applied to the customer's bill for the following billing period as a reduction in the customer's kilowatt-hour usage.

2. Excess Usage. If the customer's kilowatt-hour usage exceeds the electricity generated by its renewable generation facility during the billing period plus any kilowatt-hour credits pursuant to subparagraph 1, the customer shall be billed for the excess kilowatt-hour usage at the applicable retail rate for electricity service.

3. Unused Credits. A customer may accumulate unused kilowatt-hour credits and apply them against kilowatt-hour usage over a 12-month period. At the end of each 12-month period, any accumulated unused kilowatt-hour credits shall be eliminated and may not be applied against any future kilowatt-hour usage. The customer will receive no compensation for unused kilowatt-hour credits.

In our *Order Adopting Rule*, we explained that the “annualized” net billing approach (in which unused credits can be accumulated for a 12-month period) was proposed to both recognize the cyclic nature of some renewable resources (e.g. small hydropower and wind power) and to fairly balance the benefits and costs of promoting small renewables.

Mr. Bertl raises a valid concern that, depending on the net billing anniversary date, the intent of the annualized approach could be frustrated. This could occur, for example, if the net billing contract begins after the high hydropower output months. The result is that there are no “credits” to be used to offset usage during the low production months at the beginning of the 12-month period, and the customer would have limited ability to take advantage of the high output months that would occur near the end of the period.

There are two approaches to this problem that merit consideration. The first would be to allow the net billing customer to choose its “anniversary date.” The second would be a 12-month rolling methodology for individual months in which credits accumulated in any given month could be used to offset usage over the succeeding 12-months.

CMP has indicated orally that it is willing to allow a customer to choose the anniversary date of its net billing contract, but that it interprets the rule to require all unused credits to expire once each year on the contractual anniversary date.

Our review of this issue leads us to conclude that both approaches (i.e. choice of anniversary date and the individual month rolling methodology) are consistent with the language of the rule and the intent of annualized method. We therefore interpret Chapter 313 to allow a customer to choose either approach for implementation of the annualized net billing methodology.

IV. CONCLUSION

CMP shall net bill Mr. Bertl's accounts consistent with our interpretation of Chapter 313 as expressed in this Advisory Ruling.

Dated at Augusta, Maine, this 3rd day of April, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond